

³ The high standard for IIED claims is reflected in the scarcity of triable issues those claims create. “It has been said that the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.” *Cox v. Keystone Carbon Co.*, 861 F.2d 390, 395 (3d Cir. 1988) (internal quotation marks omitted) (*quoting* *Buczek v. First National Bank of Mifflintown*, 531 A.2d 1122, at 1125 (Super. Ct. 1987)). In the employment context, “it is extremely rare to find conduct . . .

2. Judgment is **ENTERED** in favor of Defendant and against Plaintiffs as to Counts IV (False Imprisonment) and V (IIED).
3. Defendant's Motion is **GRANTED in part** and **DENIED in part** as to Count III (Punitive Damages).⁴ Count III (Punitive Damages) is **DISMISSED**.

IT IS FURTHER ORDERED that Count II (Damages) is **DISMISSED sua sponte**.⁵

BY THE COURT:

/s/ John M. Gallagher

JOHN M. GALLAGHER

United States District Court Judge

that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of [IIED].” *See Hoy v. Angelone*, 720 A.2d 745, 754 (Pa. 1998) (*quoting Cox*, 861 F.2d at 395).

Though the Court recognizes the traumatic ordeal Mr. Crespo experienced, Plaintiffs’ briefing does not establish an issue of fact as to the “atrocious” conduct necessary to create a triable issue. Whatever Defendant’s culpability for its actions and inactions—such as failing to maintain a functioning retrieval system—its severity is tempered by Mars’s clear concern for Mr. Crespo on the day in question. The record establishes that Mars exhibited enough concern for Mr. Crespo’s safety to keep this matter quite far from conduct “utterly intolerable in a civilized society.” *Cox*, 861 F.2d at 395.

⁴ We dismiss this count because damages are not an independent cause of action. *See Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800, 802 (1989), *abrogated on other grounds*, 298 A.3d 44 (Pa. 2023). But we do not strike the requested relief because the record establishes a triable issue for the factfinder. Punitive damages require a showing of “intentional, reckless or malicious” conduct. *Feld v. Merriam*, 485 A.2d 742, 748 (Pa. 1984). Plaintiffs have identified an alarming lack of precautions taken by Defendant in the face of known, serious risks. To strike this relief, the Court must conclude that “no reasonable inference from the facts alleged supports a punitive award.” *Keen v. C.R. Bard, Inc.*, 480 F. Supp. 3d 624, 646 (E.D. Pa. 2020) (*quoting Soufflas v. Zimmer, Inc.*, 474 F. Supp. 2d 737, 756 (E.D. Pa. 2007)). No such conclusion may be drawn on this record.

Though we dismiss the only intentional tort claim (Count V), *see* n.3 *supra*, a jury may still grant punitive damages for negligence. *See Hutchison ex rel. Hutchison v. Luddy*, 870 A.2d 766, 773 (Pa. 2005).

⁵ Defendants did not so move, but we dismiss this count without striking relief. *See* n.4 *supra*.